

# HOUSE . . . . . No. 1844

By Representatives Rushing of Boston and Canavan of Brockton,  
petition of Byron Rushing and others for legislation to make it unlawful  
to discriminate on the basis of height and weight. Labor and Workforce  
Development.

## The Commonwealth of Massachusetts

### PETITION OF:

Byron Rushing	Willie Mae Allen
Christine E. Canavan	Gloria L. Fox
Timothy J. Toomey, Jr.	Linda Dorcena Forry
Matthew C. Patrick	Susan C. Fargo
Martha M. Walz	Carl M. Sciortino, Jr.
Benjamin Swan	

In the Year Two Thousand and Seven.

AN ACT MAKING DISCRIMINATION ON THE BASIS OF WEIGHT AND HEIGHT  
UNLAWFUL.

*Be it enacted by the Senate and House of Representatives in General  
Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 4 of said Chapter 151B is hereby amended  
2 by striking out subsection 1, as appearing in the 1990 Official Edi-  
3 tion, and inserting in place thereof the following subsection:—

4 1.) For an employer, by himself or his agent, because of the race,  
5 color, religious creed, national origin, sex, height, weight, sexual ori-  
6 entation, which shall not include persons whose sexual orientation  
7 involves minor children as the sex object, or ancestry of any indi-  
8 vidual to refuse to hire or employ or to bar or to discharge from  
9 employment such individual or to discriminate against such indi-  
10 vidual in compensation or in terms, conditions or privileges of  
11 employment, unless based upon a bona fide occupational qualifica-  
12 tion.

1 SECTION 2. Said Section 4 of said Chapter 151B is hereby fur-  
2 ther amended by striking out subsection 2, as so appearing, and  
3 inserting in place thereof the following subsection:—

4     2.) For a labor organization, because of the race, color, religious  
5     creed, national origin, sex, height, weight, sexual orientation which  
6     shall not include persons whose sexual orientation involves minor  
7     children as the sex object, age, or ancestry of any individual, or  
8     because of the handicap of any person alleging to be a qualified  
9     handicapped person, to exclude from full membership rights or to  
10    expel from its membership such individual or to discriminate in any  
11    way against any of its members or against any employer or any indi-  
12    vidual employed by an employer unless based upon a bona fide  
13    occupational qualification.

1     SECTION 3. Said Section 4 of said Chapter 151B is hereby fur-  
2     ther amended by striking out subsection 3, as so appearing, and  
3     inserting in place thereof the following subsection:—

4     3.) For any employer or employment agency to print or circulate  
5     or cause to be printed or circulated any statement, advertisement or  
6     publication, or to use any form of application for employment or to  
7     make any inquiry or record in connection with employment, which  
8     expresses, directly or indirectly, any limitation, specification or dis-  
9     crimination as to the race, color, religious creed, national origin, sex,  
10    height, weight, sexual orientation, which shall not include persons  
11    whose sexual orientation involves minor children as the sex object,  
12    age or ancestry, or the handicap of a qualified handicapped person or  
13    any intent to make any such limitation, specification or discrimina-  
14    tion, or to discriminate in any way on the ground of race, color, reli-  
15    gious creed, national origin, sex, sexual orientation, age, ancestry or  
16    the handicap of a qualified handicapped person, unless based upon a  
17    bona fide occupational qualification.

1     SECTION 4. Said Section 4 of said Chapter 151B is hereby fur-  
2     ther amended by striking out subsection 3A, as so appearing, and  
3     inserting in place thereof the following subsection:—

4     3A.) For any person engaged in the insurance or bonding busi-  
5     ness, or his agent, to make any inquiry or record of any person  
6     seeking a bond or surety bond conditioned upon faithful perfor-  
7     mance of his duties or to use any form of application in connection  
8     with the furnishing of such bond, which seeks information relative to  
9     the race, color, religious creed, national origin, sex, height, weight,  
10    sexual orientation, which shall not include persons whose sexual

11 orientation involves minor children as the sex object, or ancestry of  
12 the person to be bonded.

1 SECTION 5. Said Section 4 of said Chapter 151B is hereby fur-  
2 ther amended by striking out subsection 6, as so appearing, and  
3 inserting in place thereof the following subsection:—

4 6.) For the owner, lessee, sublessee, licensed real estate broker,  
5 assignee or managing agent of publicly assisted or multiple dwelling  
6 or contiguously located housing accommodations or other person  
7 having the right of ownership or possession or right to rent or lease,  
8 or sell or negotiate for the sale of such accommodations, or any  
9 agent or employee of such a person, or any organization of unit  
10 owners in a condominium or housing cooperative:—

11 (a) to refuse to rent or lease or sell or negotiate for sale or other-  
12 wise to deny or withhold from any person or group of persons such  
13 accommodations because of the race, religious creed, color, national  
14 origin, sex, height, weight, sexual orientation, which shall not  
15 include persons whose sexual orientation involves minor children as  
16 the sex object, age, ancestry, or marital status of such person or per-  
17 sons or because such person is a veteran or member of the armed  
18 forces, or because such person is blind, or hearing impaired;

19 (b) to discriminate against any person because of his race, reli-  
20 gious creed, color, national origin, sex, height, weight, sexual orien-  
21 tation, which shall not include persons whose sexual orientation  
22 involves minor children as the sex object, age, ancestry, or marital  
23 status or because such person is a veteran or member of the armed  
24 forces, or because such person is blind, or hearing impaired, in the  
25 terms, conditions or privileges of such accommodations or the  
26 acquisitions thereof, or in the furnishings of facilities and services in  
27 connection therewith, or because such a person possesses a trained  
28 dog guide as a consequence of blindness, or hearing impairment;

29 (c) to cause to be made any written or oral inquiry or record con-  
30 cerning the race, religious creed, color, national origin, sex, height,  
31 weight, sexual orientation, which shall not include persons whose  
32 sexual orientation involves minor children as the sex object, age,  
33 ancestry or marital status of the person seeking to rent or lease or  
34 buy any such accommodation, or concerning the fact that such  
35 person is a veteran or a member of the armed forces or because such  
36 person is blind or hearing impaired. The word “age” as used in this

37 subsection shall not apply to persons who are minors nor to resi-  
38 dency in state aided or federally-aided housing developments for the  
39 elderly nor to residency in retirement communities consisting of  
40 either a structure or structures constructed expressly for use by the  
41 elderly on one parcel or on contiguous parcels of land, totaling at  
42 least ten acres in size, which communities have a minimum age  
43 requirement for residency of at least fifty-five years; provided, how-  
44 ever, that no more than one of the persons occupying any unit may  
45 be under fifty-five years of age, exclusive of nurses or other person  
46 providing health care services to the elderly occupants of said unit.

1 SECTION 6. Said Section 4 of said Chapter 151B is hereby fur-  
2 ther amended by striking out subsection 7, as so appearing, and  
3 inserting in place thereof the following subsection:—

4 7.) For the owner, lessee, sublessee, real estate broker, assignee,  
5 or managing agent or other covered housing accommodations or of  
6 land intended for the erection of any housing accommodation  
7 included under subsection 10, 11, 12, or 13 of Section one, or other  
8 person having the right of ownership or possession or right to rent or  
9 lease or sell, or negotiate for the sale or lease of such land or accom-  
10 modations, or any agent or employee of such a person or any organi-  
11 zation of unit owners in a condominium or housing cooperative:—

12 (a) to refuse to rent or lease or sell or negotiate for sale or lease or  
13 otherwise to deny or withhold from any person or group of persons  
14 such accommodations or land because of race, color, religious creed,  
15 national origin, sex, height, weight, sexual orientation, which shall  
16 not include persons whose sexual orientation involves minor chil-  
17 dren as the sex object, age, ancestry, or marital status, veteran status  
18 or membership in the armed forces, blindness, hearing impairment,  
19 or because such person possesses a trained dog guide as a conse-  
20 quence of blindness or hearing impairment of such person or per-  
21 sons;

22 (b) to discriminate against any person because of his race, color,  
23 religious creed, national origin, sex, height, weight, sexual orienta-  
24 tion, which shall not include persons whose sexual orientation  
25 involves minor children as the sex object, age, ancestry, or marital  
26 status, veteran status or membership in the armed services, blind-  
27 ness, or hearing impairment, or because such person possesses a  
28 trained dog guide as a consequence of blindness or hearing impair-

29 ment in the terms, conditions or privileges of such accommodations  
30 or land of the acquisition thereof, or in the furnishing of facilities  
31 and services in the connection therewith, or

32 (c) to cause to be made any written or oral inquiry or record con-  
33 cerning the race, color, religious creed, national origin, sex, height,  
34 weight, sexual orientation, which shall not include persons whose  
35 sexual orientation involves minor children as the sex object, age,  
36 ancestry, marital status, veteran status or membership in the armed  
37 services, blindness, hearing impairment or because such person pos-  
38 sesses a trained dog guide as a consequence of blindness or hearing  
39 impairment, of the person seeking to rent or lease or buy any such  
40 accommodation or land; provided, however, that this subsection  
41 shall not apply to the leasing of a single apartment or flat in a two  
42 family dwelling, the other occupancy unit of which is occupied by  
43 the owner as his residence. The word “age” as used in this subsec-  
44 tion shall not apply to persons who are minors, nor to residency in  
45 state-aided or federally-aided housing developments for the elderly  
46 nor to residency in retirement communities consisting of either a  
47 structure or structures constructed expressly for use by the elderly on  
48 one parcel or on contiguous parcels of land, totaling at least ten acres  
49 in size, which communities have a minimum age requirement for  
50 residency of at least fifty-five years; provided, however, that no  
51 more than one of the persons occupying any unit may be under fifty-  
52 five years of age, exclusive of nurses or other person providing  
53 health care services to the elderly occupants of said unit.

1 SECTION 7. Said Section 4 of said Chapter 151B, as so  
2 appearing, is hereby further amended by striking out subsection 8  
3 and inserting in place thereof the following subsection:—

4 8.) For the owner, lessee, sublessee, or managing agent of, or  
5 other person having the right of ownership or possession of or the  
6 right to sell, rent or lease, commercial space:—

7 (1) To refuse to sell, rent, lease or otherwise to deny or withhold  
8 from any person or group of persons such commercial space because  
9 of race, color, religious creed, national origin, sex, height, weight,  
10 sexual orientation, which shall not include persons whose sexual ori-  
11 entation involves minor children as the sex object, age, ancestry or  
12 marital status of such person or persons.

13 (2) To discriminate against any person because of his race, color,  
14 religious creed, national origin, sex, height, weight, sexual orienta-  
15 tion, which shall not include persons whose sexual orientation  
16 involves minor children as the sex object, age, ancestry or marital  
17 status in the terms, conditions or privileges of the sale, rental or  
18 lease of any such commercial space or in the furnishing of facilities  
19 or services in connection therewith.

20 (3) To cause to be made any written or oral inquiry or record con-  
21 cerning the race, color, religious creed, national origin, sex, sexual  
22 orientation, which shall not include persons whose sexual orientation  
23 involves minor children as the sex object, age, ancestry or marital  
24 status of a person seeking to rent or lease or buy any such commer-  
25 cial space. The word “age” as used in this subsection shall not apply  
26 to persons who are minors, nor to residency in state-aided or feder-  
27 ally-aided housing developments for the elderly nor to residency in  
28 self-contained retirement communities constructed expressly for use  
29 by the elderly and which are at least twenty acres in size and have a  
30 minimum age requirement for residency of at least fifty-five years.

1 SECTION 8. Said Section 4 of said Chapter 151B, as so  
2 appearing, is hereby further amended by striking out the last para-  
3 graph and inserting in place thereof the following paragraph:—

4 Nothing contained in this chapter or any rule or regulation issued  
5 by the commission shall be interpreted as requiring any employer,  
6 employment agency or labor organization to grant preferential treat-  
7 ment to any individual or to any group because of the race, color,  
8 religious creed, national origin, sex, height, weight, sexual orienta-  
9 tion, which shall not include persons whose sexual orientation  
10 involves minor children as the sex object, age or ancestry of such  
11 individual or group because of imbalance which may exist between  
12 the total number or percentage of persons employed by any  
13 employer, referred or classified for employment by any employment  
14 agency or labor organization, admitted to membership or classified  
15 by any labor organization or admitted to or employed in, any appren-  
16 ticeship or other training program, and the total number or per-  
17 centage of persons of such race, color, religious creed, national  
18 origin, sex, sexual orientation, which shall not include persons  
19 whose sexual orientation involves minor children as the sex object,  
20 age or ancestry in the Commonwealth or in any community, section

21 or other area therein, or in the available work force in the Common-  
22 wealth or in any of its political subdivisions.

1 SECTION 9. Section 92A of Chapter 272 of the General Laws, as  
2 so appearing, is hereby amended by striking out the first paragraph  
3 and inserting in place thereof the following paragraph:—

4 No owner, lessee, proprietor, manager, superintendent, agent or  
5 employee of any place of public accommodation, resort or amuse-  
6 ment shall, directly or indirectly, by himself or another, publish,  
7 issue, circulate, distribute or display, or cause to be published,  
8 issued, circulated, distributed or displayed, in any way, any adver-  
9 tisement, circular, folder, book, pamphlet, written or painted or  
10 printed notice or sign, of any kind or description, intended to dis-  
11 criminate against or actually discriminating against persons of any  
12 religious sect, creed, class, race, color, denomination, sex, height,  
13 weight, sexual orientation, which shall not include persons whose  
14 sexual orientation involves minor children as the sex object, nation-  
15 ality, or because of deafness or blindness, or any physical or mental  
16 disability, in the full enjoyment of the accommodations, advantages,  
17 facilities or privileges offered to the general public by such places of  
18 public accommodation, resort or amusement.

1 SECTION 10. Said Chapter 272 is hereby further amended by  
2 striking out Section 98, as so appearing, and inserting in place  
3 thereof the following section:—

4 Section 98. Whoever makes any distinction, discrimination or  
5 restriction on account of race, color, religious creed, national origin,  
6 sex, height, weight, sexual orientation, which shall not include per-  
7 sons whose sexual orientation involves minor children as the sex  
8 object, deafness, blindness or any physical or mental disability or  
9 ancestry relative to the admission of any person to, or his treatment  
10 in any place of public accommodation, resort or amusement, as  
11 defined in Section ninety-two A, or whoever aids or incites such dis-  
12 tinction, discrimination or restriction, shall be punished by a fine of  
13 not more than twenty-five hundred dollars or by imprisonment for  
14 not more than one year, or both, and shall be liable to any person  
15 aggrieved thereby for such damages as are enumerated in Section  
16 five of Chapter one hundred and fifty-one B; provided, however, that  
17 such civil forfeiture shall be of an amount not less than three

18 hundred dollars; but such person so aggrieved shall not recover  
19 against more than one person by reason of any one act of distinction,  
20 discrimination or restriction. All persons shall have the right to the  
21 full and equal accommodations, advantages, facilities and privileges  
22 of any place of public accommodation, resort or amusement subject  
23 only to the conditions and limitations established by law and applic-  
24 able to all persons. This right is recognized and declared to be a civil  
25 right.